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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/701,199

11/04/2003

Dennis A. Durbin

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7590

04/21/2005

Michael F. Williams  
Simmons, Perrine, Albright & Ellwood, P.L.C.  
Suite 1200  
115 Third Street SE  
Cedar Rapids, IA 52401

EXAMINER

KIM, AHSHIK

ART UNIT

PAPER NUMBER

2876

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

8m

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/701,199		DURBIN, DENNIS A.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Ahshik Kim		2876	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 2/7/05 (Amendment).
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Terminal Disclaimer*

1. The terminal disclaimer filed on February 7, 2005 disclaiming the terminal portion of any  
5 patent granted on this application, which would extend beyond the expiration date of US Patent  
No. 5,414,251 to Durbin has been reviewed and is accepted. The terminal disclaimer has been  
recorded.

### *Response*

- 10 2. Receipt is acknowledged of the response filed on February 7, 2005. No claims were  
canceled, amended or newly added. Currently, claims 1-34 remain for examination.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the  
15 basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on  
sale in this country, more than one year prior to the date of application for patent in the United States.

- 20 4. Claims 1-7, 9-13, 15-21, 23-29, and 31-34 are rejected under 35 U.S.C. 102(b) as being  
anticipated by Wang et al. (US 5,513,264, hereinafter “Wang”).

Re claims 1, 2, 5, 6, 10-13, 15, 18, 23-26, 29, 31, and 34, Wang discloses an one-  
dimensional /two-dimensional barcode reader (see abstract; col. 4, lines 12-23) comprising a  
25 hand-held housing (see figures 3a and 3b; col. 5, lines 8+), a photo sensor array in the form of

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CCD (col. 5, lines 10+); an optical system the form of CCD (col. 5, lines 10+); an optical system (col. 1, lines 11+); a memory system for storing the captured image (col. 6, lines 2+) and a display system 16 (col. 4, lines 23+) which displays the actual code being scanned.

Re claims 3, 19, and 28, as disclosed in the abstract, the dataform can be edited or  
5 modified, which can be considered as a feedback.

Re claim 9, 17, and 33, the reader allows users to focus on area or field of depth (col. 4, line 67 – col. 5, line 3).

Re claims 4, 20, and 27, the reader itself contains function of pattern recognition (since some codes are not decoded even if they are aimed and captured).

10 Re claim 21, the “neural” is defined as “1: of, relating to, or affecting a nerve or the nervous system 2: situated in the region of or on the same side of the body as the brain and spinal cord.” (Merriam-Webster’s Collegiate Dictionary, 10<sup>th</sup> edition). The encoding system 10 includes various I/O devices and a computer. Analogously interpreted, the barcode reader contains a processor which is connected to subcomponents such as image capturing and  
15 processing, decoding, A/D converting, etc. In view of the above, pattern recognition system is part of the network within the device.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all  
20 obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the  
25 manner in which the invention was made.

6. Claims 8, 16, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang et al. (US 5,513,264, hereinafter "Wang") in view of Sant' Anselmo et al. (US 5,331,176, hereinafter "Sant' Anselmo"). The teachings of Wang have been discussed above.

5 Wang fails to specifically teach or fairly suggest that the reader apparatus is further comprised of a zoom system.

Sant' Anselmo teaches a raster optical scanner (see abstract; col. 4, lines 23-34) comprising a zoom system (col. 4, lines 55+).

10 In view of Sant' Anselmo's teaching, it would have been obvious to an ordinary skill in the art at the time the invention was made to further incorporate a well-known zoom system to the teachings of Wang to in order to enlarge the target and therefore improve image capturing and decoding. Use of zooming system in an optical device such as camera and scanner is well within one ordinary skill in the art. Use of zoom to improve overall readability of the barcode is an obvious expedient one ordinary skill in the art would contemplate.

15 7. Claims 14, 22, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang et al. (US 5,513,264, hereinafter "Wang") in view of Dvorkis et al. (US 5,373,148, hereinafter "Dvorkis"). The teachings of Wang have been discussed above.

20 Wang fails to specifically teach or fairly suggest that the reader apparatus is further comprised of a rastering device. Wang also does not disclose that the reader has a means to reduce jittering when in use.

Dvorkis teaches a raster optical scanner (see col. 3, lines 21-40) further comprising a means to eliminates jittering of the devices (col. 12, lines 13-24).

It is the Examiners' view that raster scanning method, and jitter reducing means as disclosed in Dvorkis are well known improvements found in optical readers. Therefore, such modifications would have been an obvious extension as taught by Dvorkis for improving overall functionalities of the scanner and therefore an obvious expedient.

5

### *Response to Arguments*

8. Applicant's response filed on February 7, 2005 have been fully considered. Applicant contends that the cited references are invalid for 102(b) because the instant application claims the benefit of US Patent Applicant No. 07/849,771 which was filed on March 12, 1992. As  
10 disclosed in page 1 of the specification, the instant application lists many applications as related applications by way of continuation application and continuation-in-part application.

MPEP 201.08 provides a guideline for continuation-in-part application as follows:

15 Accordingly, an alleged continuation-in-part application should be permitted to claim the benefit of the filing date of an earlier nonprovisional application if the alleged continuation-in-part application complies with the following formal requirements of 35 U.S.C. 120: (A) The first application and the alleged continuation-in-part application were filed with at least one common inventor; (B) The alleged continuation-in-part application was "filed before the patenting or abandonment of or termination of  
20 proceedings on the first application or an application similarly entitled to the benefit of the filing date of the first application"; and (C) The alleged continuation-in-part application "contains or is amended to contain a specific reference to the earlier filed application." (The specific reference may be in an application data sheet. See 37 CFR 1.76.)

25

It is the Examiner's view that the instant application violates the term disclosed in (B). The instant application was filed long after the "patenting of abandonment of or termination of proceedings on the first application ....." The period in (B) appears to refer to the "prosecution

term” rather than a patent term. Accordingly, Applicant’s claiming the benefit of 07/847,991 is improper.

In view of the above, the cited references are valid for 35 USC 102/103 rejections, and the rejection made in previous office action stands. This Office Action is made final.

5

### *Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

10 A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37  
15 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

20 Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahshik Kim whose telephone number is (571)272-2393. The examiner can normally be reached between the hours of 6:00AM to 3:00PM Monday thru Friday. The fax number directly to the Examiner is (571)273-2393.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee, can be reached on (571)272-2398. The fax phone number for this Group is (703)872-9306.

25 Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [ahshik.kim@uspto.gov].

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*All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.*

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956.



Ahshik Kim  
Patent Examiner  
Art Unit 2876  
April 15, 2005